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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,603	02/18/2000	Richard Harold Boivie	YO999-374	8006

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EXAMINER

CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 04/13/2004

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/506,603

Applicant(s)

BOIVIE ET AL.

Examiner

Jason D Cardone

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-21, 23, 24 and 26 is/are rejected.
- 7) ☐ Claim(s) 22 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Attached Office Action</u> . |

DETAILED ACTION

1. Applicant's election with traverse of Group II in Paper No. 6 is acknowledged. The traversal is on the ground(s) that questionable meaning of claim language and undue burden upon the examiner. This is not found persuasive because Group II discloses monitoring inbound requests, while Group I disclose monitoring outbound responses and there would have been undue burden to the Examiner to continue viewing all the groups that were within the instant application, especially with the control of communications by both input and output links.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 7 and 27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in Paper No. 7.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 1, 5, 6, 8 and 26 are objected to and rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 5, 6, 8 and 26 recites the limitation " dropping requests to said customer " in step "b" of the claims. There is insufficient antecedent basis for this limitation in the claim. As an example, step

“b” in claim 6, “queuing requests to said customer...dropping requests to said customer” is suggested to be “queuing requests of said customer...dropping requests of said customer” or “queuing requests to said customer business activity application ...dropping requests to said customer business activity application”. The other rejected claims have the same informality. Appropriate correction is required.

Allowable Subject Matter

5. The following is an examiner's statement of reasons for the indication of allowable subject matter: The prior art references of record do not teach (alone or in combination) all the limitations together, within independent claims 1, 5, 6, 8 and 26 (once the informality is corrected). For example, the independent claims contain limitations of monitoring outbound communications bandwidth usage of each client traffic to determine service level for a SLA and controlling the inbound requests by each client to guarantee SLA by selectively dropping requests of the clients, within the environment of the instant independent claims. Applicants' arguments [Paper No. 5, pages 11-13] have been fully considered and are persuasive to the limitations claimed over the prior art of record. Therefore, the combination of the limitations is allowable subject matter, in light of the specification and in view of the Applicants' persuasive arguments.

6. Claims 1, 5, 6, 8 and 26 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

7. Claims 22 and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9-21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby et al. (hereinafter Colby), USPN 6,006,264, in view of Vaid et al. (hereinafter Vaid), USPN 6,341,309.

10. Regarding claim 9, Colby discloses a communications system, comprising:

a worldwide network for communicating with a plurality of customers [Colby, col. 2, lines 22-45 and col. 5, lines 43-51]; a manager, operatively coupled to the worldwide network, for controlling and guaranteeing a service level agreement (SLA) [ie. Quality of Service (QoS) with Content-Aware Flow Switch, Colby, col. 5, line 43 – col. 6, line 28]; and at least one server functioning as a server farm, operatively coupled to the manager, the plurality of customers having electronic business activity hosted by the at least one server as the server farm [Colby, col. 2, lines 22-45 and col. 5, lines 23-51].

Colby does not disclose that the QoS (SLA) is based on a communications outbound link bandwidth usage to the plurality of customers. However, Vaid, in the

Art Unit: 2142

same field of endeavor, discloses a SLA is based on a communications outbound link bandwidth usage [ie. inbound usage, Vaid, col. 6, lines 25-41, col. 7, lines 22-32, and col. 7, line 66 – col. 8, line 6]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the basing the service level upon the outbound link bandwidth usage, disclosed by Vaid, into the QoS management device, disclosed by Colby, in order to better manage the bandwidth usage [Vaid, col. 2, lines 38-44].

11. Regarding claim 10, Colby-Vaid further discloses the worldwide network comprises the Internet [Colby, col. 2, lines 22-45] [Vaid, col. 4, lines 10-24].

12. Regarding claim 11, Colby-Vaid further discloses the customers output requests on the Internet for web data located on a cluster of servers [Colby, col. 2, lines 22-45] [Vaid, col. 4, lines 10-24].

13. Regarding claim 12, Colby-Vaid further discloses the manager comprises a Communications Bandwidth Manager (CBM) presenting a single address to the at least one server cluster [Colby, col. 5, line 43 – col. 6, line 28] [ie. firewall, col. 4, lines 10-40].

14. Regarding claim 13, Colby-Vaid further discloses the manager includes a set of queues for queuing incoming requests [Colby, col. 2, lines 59 - col. 3, line 3] [Vaid, col. 8, lines 41-64].

Art Unit: 2142

15. Regarding claim 14, Colby-Vaid further discloses the manager selects a request from the queues, selects one of the at least one server to service the request, and sends the request to that server [Colby, col. 2, lines 59 - col. 3, line 3 and col. 14, lines 5-31] [Vaid, col. 8, lines 41-64].

16. Regarding claim 15, Colby-Vaid further discloses the selected server receives the request, services the request, and sends a response directly back to the customer along a data output path, wherein a portion of the path between the at least one server and the worldwide network is shared by a cluster of servers [Colby, col. 5, lines 23-51] [Vaid, col. 6, lines 12-41].

17. Regarding claim 16, Colby-Vaid further discloses the manager controls an allocation of the outgoing data path among multiple customer sites hosted on the server cluster, by controlling incoming requests at the manager [Colby, col. 15, line 31 – col. 16, line 65] [Vaid, col. 7, lines 22-32, and col. 7, line 66 – col. 8, line 6].

18. Regarding claim 17, Colby-Vaid further discloses an input link for receiving incoming requests from customers and a set of queues for queuing the incoming requests [Colby, col. 16, lines 20-65] [Vaid, col. 6, line 65 – col. 7, line 13].

19. Regarding claim 18, Colby-Vaid further discloses the incoming requests are queued in order of arrival time and are serviced first-in, first out (FIFO) within each

Art Unit: 2142

predetermined traffic class of requests [Colby, col. 14, lines 5-19] [Vaid, col. 6, line 65 – col. 7, line 13].

20. Regarding claim 19, Colby-Vaid further discloses the queues are provided for each traffic class for each customer [Colby, col. 2, line 59 - col. 3, line 3] [Vaid, col. 5, line 20 – col. 6, line 3].

21. Regarding claim 20, Colby-Vaid further discloses the incoming requests include acknowledgment packets contain information on the quantity of outbound data that is being acknowledged, so as to estimate a volume of data that was output on an outgoing path from the server [Colby, col. 5, line 43 – col. 6, line 28] [Vaid, col. 8, lines 31-41].

22. Regarding claim 21, Colby-Vaid further discloses the manager monitors an outgoing data path to determine a number of data units delivered to a customer [Colby, col. 5, line 43 – col. 6, line 28] [Vaid, col. 7, lines 22-32].

23. Regarding claim 23, Colby-Vaid further discloses a traffic estimator for gathering monitored data on the usage of an output data path, the traffic estimator also gathering output load information from the acknowledgment packets that arrive at the set of queues [Colby, col. 14, lines 5-19] [Vaid, col. 8, lines 31-41].

24. Regarding claim 24, Colby-Vaid further discloses a scheduler for receiving compiled load information from the traffic estimator, wherein, based on the data from the traffic estimator, and service level agreement (SLA) information provided by an operator, the scheduler selects from requests in the queues, and for a selected request determines a server node to service the request, and sends the selected request to the server node [Colby, col. 15, line 31 – col. 16, line 65] [Vaid, col. 6, line 65 – col. 7, line 13].

Response to Arguments

25. Applicant's arguments, see Paper No. 4, pages 11-13, filed 10/29/03, with respect to claim 1 has been fully considered and are persuasive. The rejection of claim 1 has been withdrawn.

26. Applicant's arguments filed 10/29/03 have been fully considered but they are not persuasive toward claims 9-21, 23 and 24.

27. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., monitoring outbound communications bandwidth usage of each client traffic to determine service level for a SLA and controlling the inbound requests by each client to guarantee SLA by selectively dropping requests of the clients, within the environment of the instant independent claim 1) are not recited in the rejected claims 9-21, 23 and 24.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

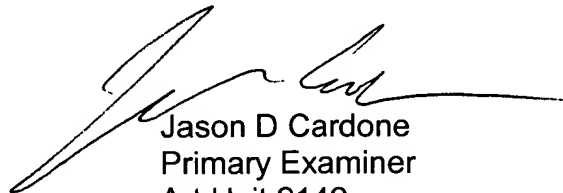
28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D Cardone whose telephone number is (703) 305-8484. The examiner can normally be reached on Mon.-Thu. (9AM-6PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (703) 305-9705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason D Cardone
Primary Examiner
Art Unit 2142

April 6, 2004